ABSTRAK

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“TINJAUAN YURIDIS PENGAMANAN EKSEKUSI OBJEK JAMINAN FIDUSIA DI INDONESIA (STUDI PUTUSAN MAHKAMAH AGUNG NOMOR 2084/K/PDT/2017)”

(xii + 130 halaman)

Penulisan tesis ini dilatar belakangi oleh kasus pengamanan eksekusi jaminan fidusia yang dianggap sebagai penarikan paksa atau perampasan objek jaminan fidusia. Pengikatan hutang piutang para pihak dinyatakan dalam Perjanjian Kredit, Akta Jaminan Fidusia, dan Sertifikat Jaminan Fidusia.

Dalam kasus ini, debitur melakukan wanprestasi karena terlambat membayar angsuran yang mengakibatkan kreditur melakukan eksekusi atas kendaraan sebagai bentuk pengamanan atas objek jaminan tersebut. Merasa bahwa kreditur telah menarik paksa atau merampas kendaraan yang dijadikan jaminan fidusia, maka debitur menggugat kreditur.

Metode penelitian yuridis normatif digunakan dalam karya tulis ini dengan menelaah ketentuan – ketentuan yang diatur dalam Undang – Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia dan Peraturan Kapolri Nomor 8 Tahun 2011 tentang Pengamanan Eksekusi Jaminan Fidusia. Adapun pendekatannya adalah perundang – undangan, terutama untuk mengkaji ketentuan serta pelaksanaan pengamanan dan eksekusi jaminan fidusia tersebut. Sementara itu, teknik pengumpulan data dilakukan berdasarkan studi kepustakaan.

Penelitian ini menghasilkan kesimpulan secara keseluruhan, Undang – Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia telah mengatur ketentuan eksekusi jaminan fidusia, kecuali masalah siapa pihak yang berwenang yang dapat membantu penerima fidusia bilamana terjadi penolakan penyerahan objek jaminan fidusia. Ketidakjelasan mengenai kewenangan itu telah mengakibatkan tidak efektifnya pelaksanaan pengamanan eksekusi jaminan fidusia. Oleh karena itu, disarankan agar dapat ditegaskan lebih ketentuan mengenai siapa pihak yang berwenang sebagaimana dimaksud dalam Penjelasan Pasal 30 Undang – Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia.

Kata Kunci : kewenangan, pengamanan, wanprestasi, eksekusi jaminan fidusia

ABSTRACT

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"JUDICIAL REVIEW OF FIDUCIARY SECURITY EXECUTION GUARANTEE IN INDONESIA (VERDICT STUDY SUPREME COURT DECISION NUMBER 2084/K/PDT/2017)"

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This thesis is motivated by a case of securing the execution of fiduciary guarantees which are assumed to be forced withdrawals or confiscation of object of fiduciary guarantee. The binding agreement of the parties is stated by making a Credit Agreement, Fiduciary Guarantee Deed, and Fiduciary Guarantee Certificate.

In this case, the debtor defaulted with late installment payments which resulted in creditor executed the vehicle as a form of security for the object of the guarantee. Feeling that creditor had forcibly withdrawn or confiscated, the vehicle used as fiduciary security, the debtor sued the creditor.

Normative juridical research is used in this paper by examining the provisions stipulated in Law No. 42 of 1999 on Fiduciary Guarentee and Regulation of the National Police Chief of the Indonesian Number 8 of 2011 on Fiduciary Guarantee Execution Security. However, the approach is legislation, especially to review the provisions and implementation regarding the security and fiduciary guarantee execution. Meanwhile, the technique of collecting data is based on literature studies.

This study resulted in an overall conclusion, Law Number 42 of 1999 concerning Fiduciary Guarantees has regulated the provisions for the execution of fiduciary guarantees, except for the issue of who is the authorized party who might assist the fiduciary recipient in the event of a refusal to submit the object of the fiduciary guarantee. The lack of clarity regarding the authority resulted in the ineffective implementation of securing the execution of fiduciary guarantee. Therefore, it is recommended to emphasized regarding who the authorized party is referred to in the Elucidation of Article 30 of Law Number 42 of 1999 concerning Fiduciary Guarantees.

Keywords : authority, security, default, execution of fiduciary guarantee